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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

,
Plaintiff(s),
v.
,
Defendant(s).

No. CV-
**ORDER SETTING JURY TRIAL
AND FINAL PRETRIAL
CONFERENCE**

IT IS ORDERED that the trial is set to begin on **[date]**, and the anticipated end date is **[date]**. The trial will be held from 9:00 to 4:30 p.m. each day in Courtroom 502, Sandra Day O'Connor U.S. Federal Courthouse, 401 W. Washington St., Phoenix, Arizona 85003.

IT IS FURTHER ORDERED that pursuant to Rule 16(e) of the Federal Rules of Civil Procedure, a Final Pretrial Conference shall be held on **[approx. 1 week before trial]**. In preparation for the Final Pretrial Conference, it is hereby ordered:

1. Attendance Required. The attorneys (or *pro se* parties) who will be responsible for the trial of the case must attend the Final Pretrial Conference. The attendees must bring their calendars and be prepared to discuss trial scheduling.

2. Proposed Pretrial Order.
Timing: The parties must jointly prepare a Proposed Pretrial Order and file it with the Court at least **fourteen days** before the Final Pretrial Conference. The parties must exchange drafts of the Proposed Pretrial Order no later than **fourteen days** before the

1 submission deadline. Plaintiff(s) have the burden of initiating such communications.
2 The parties also must submit a copy of the Proposed Pretrial Order to the Court in Word
3 format to Desai_chambers@azd.uscourts.gov.

4 *Effect:* Preparation and lodging of the Proposed Pretrial Order in accordance with
5 the requirements of this order will be deemed to satisfy the filing requirements of Rule
6 26(a)(3)(A) of the Federal Rules of Civil Procedure.

7 *Content:* The Proposed Pretrial Order must include the information prescribed in
8 the “Joint Proposed Pretrial Order” form that is available at www.azd.uscourts.gov under:
9 Judges’ Information → Orders, Forms and Procedures → Desai, Sharad H. The
10 information may not be set forth in the form of a question and must be presented in
11 concise narrative statements.

12 3. Marking of Exhibits. The parties must meet in person to exchange marked
13 copies of all exhibits to be used at trial no later than **seven days** before the submission
14 deadline for the Joint Proposed Pretrial Order. During this meeting, the parties also must
15 eliminate any duplicate exhibits.¹ Further information about the Court’s exhibit marking
16 procedures can be found in the document entitled “Exhibit Marking Instructions,” which
17 is available at www.azd.uscourts.gov under: Judges’ Info → Orders, Forms and
18 Procedures → Standard Forms Used by All Phoenix Judges.

19 During trial, the parties must advise the Courtroom Deputy in advance which
20 exhibits will be needed for each witness. All exhibits must be shown to opposing counsel
21 before being offered.

22 4. Preclusion of Undisclosed Matters. The parties are advised that the Court
23 will not allow the parties to offer any exhibit, witness, or other evidence that was not

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25 ¹ During the in-person meeting, the exhibits must be in the exact physical form that
26 will be used at trial. In other words, if a party intends to offer a paper exhibit at trial, that
27 party must have a marked paper copy at the in-person meeting, not an electronic copy.
28 Also, the parties should mark their exhibits exactly as they intend to offer them at trial.
During trial, exhibits will be admitted or rejected in their entirety. Thus, if any part of an
exhibit is objectionable, it will be excluded in its entirety. The parties will not be
permitted to break offered exhibits into admissible sub-parts if an objection is sustained.

1 disclosed in accordance with this Order and the Federal Rules of Civil Procedure and
2 listed in the Joint Proposed Pretrial Order, except to prevent manifest injustice.

3 5. Motions in Limine. The parties must file all motions in limine no later than
4 **[4 weeks before FPTC]**. Each party may file no more than ten motions in limine.
5 Responses must be filed no later than **[2 weeks before FPTC]**. No replies are permitted.
6 Each motion in limine must include proposed language for the order being sought from
7 the Court, and the proposed language must state with precision the evidence that is
8 subject to the proposed order and the limitation or exclusion placed on the evidence.
9 Each motion or response must not exceed three pages in length. Each motion must
10 include a certification pursuant to LRCiv 7.2(1). Counsel shall be prepared to argue the
11 merits of such motions at the Final Pretrial Conference.

12 The Court wishes to emphasize that, in its experience, motions in limine are often
13 used improperly. The point of a motion in limine is “to exclude anticipated prejudicial
14 evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40
15 n.2 (1984). Thus, it might be permissible for a party to seek a pretrial ruling as to the
16 admissibility of a particular piece of evidence out of concern that the evidence is not only
17 inadmissible but also inherently prejudicial, such that the bell could not be unrung even if
18 an evidentiary objection were made and sustained at trial. In contrast, motions in limine
19 “should rarely seek to exclude broad categories of evidence, as the court is almost always
20 better situated to rule on evidentiary issues in their factual context during trial.” *Lankford*
21 *v. Taylor*, 2020 WL 6395294, *3 (D. Ariz. 2020) (citation omitted). Additionally, “[a]
22 motion in limine is not the proper vehicle for seeking a dispositive ruling on a claim,
23 particularly after the deadline for filing such motions has passed.” *Hana Fin., Inc. v.*
24 *Hana Bank*, 735 F.3d 1158, 1162 n.4 (9th Cir. 2013).

25 For these reasons, trial memoranda often serve as a better vehicle than motions in
26 limine for parties to address anticipated evidentiary issues. Trial memoranda of no more
27 than seventeen pages may be filed on the same date the parties file the Joint Proposed
28 Pretrial Order. Trial memoranda may be used for parties to brief, in advance of trial,

1 their position as to the admissibility of particular pieces of evidence (or categories of
2 evidence). Additionally, trial memoranda may be used to brief other types of issues that
3 are anticipated to arise at trial, such as claims related to the sufficiency of the evidence.
4 The Court thus encourages the parties to give careful thought to whether issues that might
5 be raised in a motion in limine would be better raised in a trial memorandum. The Court
6 further encourages the parties to raise in a trial memorandum *any* issues the Court should
7 be aware of before trial.

8 6. Daubert Motions

9 The parties must file all motions challenging the admissibility of expert testimony
10 no later than **[8 weeks before FPTC]**. LRCiv 7.2(b)–(e) governs the briefing of such
11 motions.

12 7. Other Case-Related Documents. No later than the deadline for filing the
13 Joint Proposed Pretrial Order, the parties must file the following documents (and submit
14 copies of these documents in Word format to Desai_chambers@azd.uscourts.gov):

- 15 a. A stipulated joint statement of the case, which will be read to the
16 jury during voir dire.
- 17 b. A joint master list of the names of every witness who may be called
18 at trial, along with pronunciation information for uncommon names,
19 to be used during voir dire.
- 20 c. Proposed forms of verdict, including any proposed special verdict
21 forms or juror interrogatories.
- 22 d. A joint set of proposed jury instructions. **The parties must set**
23 **forth the full text of each proposed jury instruction and must**
24 **indicate when the instruction should be given (e.g., preliminary,**
25 **midtrial, and/or final).** The joint set must be organized into four
26 sections based on the following categories:
 - 27 (1) All applicable Ninth Circuit Model Civil Jury Instructions,
28 which are available at [- 4 -](http://www3.ce9.uscourts.gov/jury-</div><div data-bbox=)

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instructions/model-civil, with only one instruction per page. If a model instruction is requested by all parties, the instruction shall be preceded by “ST” (stipulated-to). If the instruction is requested by fewer than all parties, the instruction shall be preceded by “PL” (Plaintiff(s)), “DF” (Defendant(s)), or another clear indicator. For model instructions that have bracketed options or placeholders, the parties shall insert the information required for the placeholder and indicate to which bracketed option(s) the parties have stipulated. If the parties modify model instructions in any other way, they should indicate any changes in the same manner as for amended pleadings pursuant to LRCiv 15.1.

- (2) Any non-model instructions to which the parties have stipulated, with only one instruction per page.
- (3) Any non-model instructions requested by Plaintiff(s) (numbered consecutively), with only one instruction per page. Plaintiff(s) shall include citation to authority to support the requested instruction. Defendant(s) shall state all objections to such instruction immediately following the instruction and the authority cited by Plaintiff(s). Defendant(s) shall support any objection with citation to authority. If Defendant(s) offer an alternative instruction, such alternative instruction shall immediately follow the objection.
- (4) Any non-model instructions requested by Defendant(s) (numbered consecutively), with only one instruction per page. Defendant(s) shall include citation to authority to support the requested instruction. Plaintiff(s) shall state all objections to

1 such instruction immediately following the instruction and the
2 authority cited by Defendant(s). Plaintiff(s) shall support any
3 objection with citation to authority. If Plaintiff(s) offer an
4 alternative instruction, such alternative instruction shall
5 immediately follow the objection.

6 8. Juror Questionnaires: The Court uses the Juror Questionnaire available at
7 www.azd.uscourts.gov under: Judges' Information → Orders, Forms and Procedures →
8 Desai, Sharad H. The parties shall meet and confer and jointly prepare a proposed Juror
9 Questionnaire that includes the following:

- 10 a. A stipulated joint statement of the case after Question 1.
11 b. No more than three supplemental questions, with no subparts,
12 proposed by Plaintiff(s) to be added at and after Question 25.
13 Defendant(s) shall briefly state any objection to a proposed question
14 immediately following the question, and Plaintiff(s) shall briefly
15 respond after Defendant(s)' objection.
16 c. No more than three supplemental questions, with no subparts,
17 proposed by Defendant(s) to be added after the supplemental
18 questions proposed by Plaintiff(s). Plaintiff(s) shall briefly state any
19 objection to a proposed question immediately following the
20 question, and Defendant(s) shall briefly respond after the objection.

21 The Court may modify the joint statement and may not approve all questions proposed by
22 the parties. The parties must file the proposed Juror Questionnaire and provide it to the
23 Court in Word format to Desai_chambers@azd.uscourts.gov no later than **[six weeks**
24 **before FPTC]**.

25 Prior to the Final Pretrial Conference, the Court will make the responses to the
26 Juror Questionnaire available to the parties and will provide additional instructions.

27 9. Settlement Discussions: The parties must be prepared to advise the Court at
28 the Final Pretrial Conference of the status of settlement discussions. Should settlement

1 be reached at any time, the parties must promptly file a Notice of Settlement with the
2 Clerk of the Court.

3 10. Information for Court Reporter. To facilitate the creation of an accurate
4 record, please prepare a “Notice to Court Reporter” one week before the Final Pretrial
5 Conference containing the following information:

- 6 a. Proper names, including those of witnesses.
- 7 b. Acronyms.
- 8 c. Geographic locations.
- 9 d. Technical (including medical) terms, names, or jargon.
- 10 e. Case names and citations.
- 11 f. Phonetic spelling of unusual or difficult words or names.

12 This notice need not be filed but must be provided via e-mail to Kim Portik at
13 Kim_Portik@azd.uscourts.gov and to Desai_chambers@azd.uscourts.gov. Counsel also
14 must advise the Court Reporter as soon as possible if they would like to receive a real-
15 time feed or daily turnaround transcript of the proceedings.

16 11. Delivery of Final Exhibits.

17 Counsel shall contact the Courtroom Deputy, Robert_Vasquez@azd.uscourts.gov,
18 **seven days before trial** to make arrangements for counsel or their representative to
19 deliver finalized and marked copies of all exhibits. The finalized exhibits must be
20 delivered to the Courtroom Deputy at least **48 hours** before trial.

21 11. Compliance Required. Compliance with the provisions of this Order is
22 critical to the Court’s case management responsibilities and to the parties’ responsibilities
23 under Rule 1 of the Federal Rules of Civil Procedure. Thus, full and complete
24 compliance with this Order is required.